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PATRICK H. STIEHM
Admitted: Virginia, Maryland & Minnesota

April 28, 2006

VIS FEDEX

Ms. Roseann B. Mackechnie
Clerk
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Court House
40 Foley Square
New York, NY 10007

Re: Filing procedures for pro se appeals that are currently docketed and pending

Dear Ms. Mackechnie:

I am considering filing a notice of appearance in several appeals, which are presently pro se.

I am unclear, however, concerning the Second Circuit Local Rules as they pertain to counsel filing an appearance after a *pro se* appeal has already been filed and docketed. It is my understanding that all counsel requirements pertain to docketing a new appeal. Out of an abundance of caution, I am requesting information on how this administrative procedure may be effected. I am informed that only a notice of appearance is necessary, and that forms C and D are unnecessary, since the appeal has already been docketed, and that, upon the filing of a notice of appearance by an attorney, there is only a need for a revised briefing schedule. If you would please provide me directions as to how the Second Circuit would like to have this administrative matter handled, I would be most appreciative.

Sincerely,

Patrick H. Stiehm

PHS/egj

APP. L1

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TIBBETTS v. STEMPEL	:	No. 05-5873, 05-5826, 05-5830
	:	June 29, 2006

APPELLANT'S MOTION FOR FILING PROCEDURES

Comes Now the Appellant Pro Se to respectfully request the filing and scheduling procedures for counsel in *pro se* appeals. Currently the Local Rules of the Second Circuit contain no rules, regulations, or guidelines on filing and scheduling procedures for counsel in *pro se* appeals. The Second Circuit Local Rules are devoid on these procedures, and the interpretation of existing rules is ambiguous. For example, the Local Rules instruct counsel to file Forms C and D as proper appellate procedure for docketing an appeal, however this requirement is "waived" in *pro se* appeals. Accordingly, if counsel enters an appearance in a *pro se* appeal, there are no guidelines as to whether this counsel must files Forms C and D, as previously "waived," or whether counsel must file Forms C and D anew. Precisely because there are no published rules, regulations, or guidelines on this matter, it is understandable that the Clerk of the Court is not able to provide instructions on this matter, without further directions from the Court. *See* attached letters to the Clerk requesting information on same.

Wherefore to facilitate this appeal in particular, and to facilitate other similarly situated *pro se* appeals in general, it is respectfully requested that the Court provide rules and guidance on this matter.

Jeffrey L. Tibbetts
P.O. Box 9843
Arlington, VA 22219
301-469-6066 (home)
703-953-8978 (cell phone)
tibbetts@aya.yale.edu

August 10, 2006

Ms. Roseann B. Mackechnie
Clerk
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Court House
40 Foley Square
New York, NY 10007

RE: Status on Court's Rules for Counsel Appearance in *Pro Se* Appeals

Dear Ms. Mackechnie:

I have written and filed motions regarding the lack of rules and regulations for counsel entering appearances in *pro se* appeals.

The issue here is where counsel must file pre-docketing Forms C and D in counseled appeals, whether this requirement is "waived" in *pro se* appeals. As you know, the Second Circuit Local Rules specifically "waive" the filing requirement of Forms C and D in *pro se* appeals. Yet the Second Circuit Local Rules are silent as to whether counsel must file these forms in *pro se* appeals.

The Second Circuit is unique among the U.S. Court of Appeals for requiring the filing of Forms C and D for its docketing procedures. Accordingly, where there is an obvious discrepancy over what rules apply in this unique filing scenario, the Second Circuit has a heightened obligation to ensure due process considerations (i.e. "notice") have been satisfied regarding the filing procedures for *pro se*-to-counseled appeals. As already noted, the Second Circuit Local Rules are completely silent on this fundamental due process requirement concerning notice as to whether Forms C and D are required in *pro se*-to-counseled appeals.

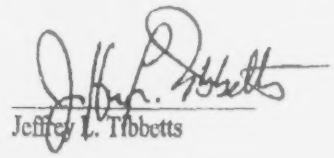
I retained counsel, Patrick Stiehm, who has asked the same questions. Patrick Stiehm has been representing my legal interests for the past three years. However for some unexplicable reason, he recently wrote letters to you and other deputy clerks stating that he does not recall representing me in these appeals. Although I have since produced his own written agreements and letters to the contrary, I still require an answer to my request regarding the Second Circuit's filing procedures for the applicability of Forms C and D in *pro se*-to-counseled appeals.

regarding the Second Circuit's filing procedures for the applicability of Forms C and D in *pro se*-to-counseled appeals.

Even if Mr. Stiehm no longer continues to represent my interests in this appeal, I still have substitute counsel who requires clarification of these filing procedures regarding the applicability of Forms C and D in a *pro se*-to-counseled appeals. Equally important, the Court must still address due process concerns regarding published "notice" requirements in the Second Circuit Local Rules.

I am looking forward to receiving the Court's clarification on these filing procedures.

Very respectfully,



Jeffrey L. Tibbetts

cc: Ms. Anna Steglich, Tibbetts v. Dittes, No. 05-4695
Ms. Debra Holmes, Tibbetts v. President and Fellows, No. 05-5780
Mr. Eddie Andino, Tibbetts v. Stempel, Consolidated (Nos. 05-5873, 05-5826, 05-5830)

Attachment

VIA FAX (212) 857-8681

February 3, 2006

Calendar Team
USCA for the Second Circuit
40 Foley Square
New York, NY 10007

Re: Tibbetts v. Dittes, No. 05-0694cv

To Whom It May Concern:

On behalf of appellant Jeffrey Tibbetts, I write in response to Appellees' letter, dated February 2, 2006, which was filed pursuant to FRAP 28(j).

Appellees' letter, like their brief, operates under the assumption that Mr. Tibbetts "did not pursue a direct appeal to conclusion." Accordingly, Appellees argue that, because Mr. Tibbetts failed to raise issues on direct appeal, those issues should not be heard as part of a Rule 60(b)(4) motion. Yet, while *Wendt v. Leonard*, 431 F.3d 410 (4th Cir. 2005), does discuss (though does not resolve) the 60(b)(4) question, it in no way addresses Appellees' erroneous factual premise. As discussed in Appellant's Reply Brief, at page 5-6, Mr. Tibbetts *tried* to pursue his direct appeal to conclusion, but was thwarted by an ambiguity with regard to this Court's Local Rules (and incorrect information dispensed by this Court's Clerk's office). Specifically, the Rules do not make clear whether a pro se litigant (who ordinarily need not file Forms C and D) must *subsequently* file such forms if he retains counsel while the appeal is pending. Because Mr. Tibbetts' failure to file Forms C and D was caused by this ambiguity and was clearly nonwillful, dismissal of his appeal was an unwarranted sanction. *See* Fed. R. App. P. 47(a)(2) (2000) (a "local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.") (emphasis added). As a result, the principles discussed in *Wendt* do not apply here.

On a related note, I have today sent a letter to this Court's Rules Committee, respectfully requesting that the practice regarding Forms C and D be clarified in the Court's Local Rules to remove the ambiguity that has caused Mr. Tibbetts such difficulty. That letter is appended to this one.

Respectfully Submitted,

Paul Schiff Berman
40 West Hill Drive
West Hartford, CT 06119

cc: Jeffrey R. Babbin (via e-mail and first class mail)
Jeffrey L. Tibbetts (via e-mail and first class mail)

I certify that the body of this letter is 306 words, within the 350 word limit of Rule 28(j).

Paul Schiff Berman

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TIBBETTS v. LEVIN (LEAD CASE)	:	No. 05-5826-CV(L)
consolidated with	:	
TIBBETTS v. ROBINSON	:	No. 05-5830-CV
TIBBETTS v. STEMPEL	:	No. 05-5873-CV

MEMORANDUM OF LAW IN SUPPORT OF A MOTION TO RECALL MANDATE IN *TIBBETTS v. DITTES* (01-7377) FOR "NOTICE" INFIRMITIES IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)

1. SEE NOTICE ON REVERSE. **2. PLEASE TYPE OR PRINT.** **3. STAPLE ALL ADDITIONAL PAGES**

Case Caption:	District Court or Agency:	Judge:
	Date the Order or Judgment Appealed from was Entered on the Docket:	District Court Docket No.:
	Date the Notice of Appeal was Filed:	Is this a Cross Appeal? ☐ Yes ☐ No

Attorney(s) for Appellant(s): ☐ Plaintiff ☐ Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:
Attorney(s) for Appellee(s): ☐ Plaintiff ☐ Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:

Has Transcript Been Prepared?	Approx. Number of Transcript Pages:	Number of Exhibits Appended to Transcript:	Has this matter been before this Circuit previously? ☐ Yes ☐ No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)

***ADDENDUM "A"*: COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.**

***ADDENDUM "B"*: COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.**

PART A: JURISDICTION

1. Federal Jurisdiction		2. Appellate Jurisdiction	
☐ U.S. a party	☐ Diversity	☐ Final Decision	☐ Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))
☐ Federal question (U.S. not a party)	☐ Other (specify): _____	☐ Interlocutory Decision Appealable As of Right	☐ Other (specify): _____

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

APP. N1

PART B: DISTRICT COURT DISPOSITION (Check as many as apply)

1. Stage of Proceedings

- ☐ Pre-trial
- ☐ During trial
- ☐ After trial

2. Type of Judgment/Order Appealed

- ☐ Default judgment
- ☐ Dismissal/jurisdiction
- ☐ Dismissal/merit
- ☐ Summary judgment
- ☐ Declaratory judgment
- ☐ Judgment / Decision of the Court
- ☐ Jury verdict
- ☐ Judgment NOV
- ☐ Directed verdict
- ☐ Other (specify):

3. Relief

- ☐ Damages:
  - ☐ Sought: $ _____
  - ☐ Granted: $ _____
  - ☐ Denied: $ _____
- ☐ Injunctions:
  - ☐ Preliminary
  - ☐ Permanent
  - ☐ Denied

PART C: NATURE OF SUIT (Check as many as apply)

1. Federal Statutes

- ☐ Antitrust
- ☐ Bankruptcy
- ☐ Banks/Banking
- ☐ Civil Rights
- ☐ Commerce,
- ☐ Energy
- ☐ Commodities
- ☐ Other (specify): _____
- ☐ Communications
- ☐ Consumer Protection
- ☐ Copyright ◻ Patent
- ☐ Trademark
- ☐ Election
- ☐ Soc. Security
- ☐ Environmental
- ☐ Freedom of Information Act
- ☐ Immigration
- ☐ Labor
- ☐ OSHA
- ☐ Securities
- ☐ Tax

2. Torts

- ☐ Admiralty/ Maritime
- ☐ Assault / Defamation
- ☐ FELA
- ☐ Products Liability
- ☐ Other (Specify):

3. Contracts

- ☐ Admiralty/ Maritime
- ☐ Arbitration
- ☐ Commercial
- ☐ Employment
- ☐ Insurance
- ☐ Negotiable Instruments
- ☐ Other Specify

4. Prisoner Petitions

- ☐ Civil Rights Habeas Corpus
- ☐ Mandamus
- ☐ Parole
- ☐ Vacate Sentence
- ☐ Other

5. Other

- ☐ Forfeiture/Pena ty
- ☐ Real Property
- ☐ Treaty (specify): _____
- ☐ Other (specify): _____

6. General

- ☐ Arbitration
- ☐ Attorney Disqualification
- ☐ Class Action
- ☐ Counsel Fees
- ☐ Shareholder Derivative
- ☐ Transfer

7. Will appeal raise constitutional issue(s)?

☐ Yes ☐ No

Will appeal raise a matter of first impression?

☐ Yes ☐ No

1. Is any matter relative to this appeal still pending below? ☐ Yes, specify: _____ ☐ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

   (A) Arises from substantially the same case or controversy as this appeal? ☐ Yes ☐ No

   (B) Involves an issue that is substantially similar or related to an issue in this appeal? ☐ Yes ☐ No

If yes, state whether ☐ "A," or ☐ "B," or ☐ both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name:	Docket No.	Citation:	Court or Agency:

Name of Appellant:

Date:	Signature of Counsel of Record:

NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the $455 docketing fee to the Clerk of the United States District Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. *SEE* LOCAL RULE 12.1.

APPENDIX N

APP. N2

DEPARTMENT OF THE ARMY
CHARLIE COMPANY, 450TH CIVIL AFFAIRS BATTALION (AIRBORNE)
5601 BALTIMORE AVENUE
RIVERDALE, MARYLAND 20737-1025

REPLY TO
ATTENTION OF

ARRC-CPC-BBCC

16 October 2010

MEMORANDUM FOR RECORD

SUBJECT: Servicemembers Civil Relief Act

1. CPT Geoffrey L. Tibbetts served in Operation Iraqi Freedom from 29 October 2008 to 8 March 2010. A copy of his official DD 214 is attached.

2. The Servicemembers Civil Relief Act (SCRA), 50 U.S.C. § 522(a)(1), provides a stay of proceedings whenever a servicemember is "in military service or is within 90 days after termination or release from military service." Accordingly, any legal obligations of CPT Tibbetts shall commence 90 days after his release from military service on 8 March 2010, or by 6 June 2010.

Encl

JOHANNA L. KNOCH
MAJ, CA
Commanding

APP. 01

DEPARTMENT OF THE ARMY
HUMAN RESOURCES MILITARY TRANSITION ACTIVITY
FORT DIX, NEW JERSEY 08640-5089

IMNE-DIX-HRM 10 September 2010

MEMORANDUM FOR

(X) SRDC-RDMB- ST. LOUIS ATTN: AHRC-CISP-P, 1 RESERVE WAY, ST LOUIS, MO 63132-5200 (Discharge/Retired Soldiers and Reserve Soldiers).
( ) SRDC-RDMB-ALEXANDRIA ATTN: AHRC-MSR, RM 5N63, 200 STOVALL STREET, ALEXANDRIA VA 22332-0444 (Active Duty Officers).
( ) SRDC-RDMB- INDIANAPOLIS, ATTN: AHRC-EFI, 8899 E 56TH STREET, INDIANAPOLIS, IN 46249-5301(Active Duty Enlisted).
( ) COMMANDER, HRC-A ATTN: AHRC-EPF-P, 2461 EISENHOWER AVENUE, ALEXANDRIA, VA 22331-0457 (Reentry Eligibility (RE) Code Correction).

SUBJECT: Request for correction of DD Form 214, Certificate of Release or Discharge from active duty.

1. The DD Form 214 on the following soldier contained the discrepancy indicated.

NAME	SSN	RANK	EFFECTIVE DATE
TIBBETTS, GEOFFREY	096-42-3413	CPT	2010 03 08

ITEM	AS READ	SHOULD READ
#12B	2010 02 17	2010 03 08
#12C	0001 00 26	0001 01 17
#16	0	8.0
#18	REMOVE PDMRA FROM 20100129 TO 20100129 ADD PDMRA FROM 20100129 TO 20100223	

----------NOTHING FOLLOWS----------

2. Request correction is made in accordance with Chapter 2, Section I, paragraph 2-6c, AR 635-5.

3. Soldier's home address is: 3 CHURCH CIR # 243 ANNAPOLIS MARYLAND 21401-1933

FOR THE COMMANDER:

HAINES, ELIZABETH A., PA II
SERCO, JOINT READINESS CENTER

1 Encl
Cy DD Form 214
Cy orders (if required)
CF:
Indiv conc
C, Admin Div

SEP 14 2010
H4442-5-7

APP: O2

DEPARTMENT OF THE ARMY
450th CIVIL AFFAIRS BATTALION (AIRBORNE)
6601 BALTIMORE AVENUE
RIVERDALE, MD 20737

REPLY TO
ATTENTION OF:

March 5, 2009

Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

RE: Commander's Letter Pursuant to the Servicemember's Civil Relief Act,
50 U.S.C. App. § 522(b)(2)(A)

CPT Geoffrey L. Tibbetts is a U.S. Army Reservist assigned to the 450th Civil Affairs Battalion (Airborne). On January 5, 2009, he was mobilized for active-duty military service in Iraq. His military duties require attendance to all assigned training, tasks, operations, and combat missions in support of Operation Iraqi Freedom. Military leave is not authorized to appear in court at this time.

CPT Tibbetts will complete his active duty service on or about March 31, 2010.

Sincerely,

Shaun M. Edwards
MAJ, CA, USAR
Company Commander

APP. 03